

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALPS PROPERTY & CASUALTY
INSURANCE COMPANY, a foreign
insurer.,

Plaintiff,

v.

KIRK D. MILLER, an individual,
KIRK D. MILLER, P.S., a Washington
Professional Service corporation,
BRIAN CAMERON, an individual,
SHAYNE SUTHERLAND, an
individual, and CAMERON
SUTHERLAND PLLC, a Washington
Professional Limited Liability
Company,

Defendants.

CASE NO. 2:22-CV-0064-TOR

ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion for Partial Summary
Judgment (ECF No. 19). This matter was submitted for consideration without oral
argument. The Court has reviewed the record and files herein and is fully

ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 1

1 informed. For the reasons discussed below, the Motion for Partial Summary
2 Judgment (ECF No. 19) is denied.

3 **BACKGROUND**

4 This case concerns a legal malpractice insurance dispute. ECF No. 1. On
5 April 7, 2022, Plaintiff ALPS filed the present complaint seeking declaratory relief
6 regarding its duty to defend and indemnify Defendants, including Shayne
7 Sutherland individually under the policy issued to the law firm Cameron
8 Sutherland. *Id.* Mr. Sutherland filed counterclaims for declaratory relief, breach
9 of contract, and breach of the duty of good faith and fair dealing. ECF No. 7.

10 On June 28, 2022, Defendants filed the present motion. ECF No. 19. The
11 parties filed their respective response and reply. ECF Nos. 25, 33. Except where
12 noted, the following facts are not in dispute.

13 ALPS issued a Lawyers Professional Liability Policy of Insurance to law
14 firm Cameron Sutherland LLC, which was in effect from August 30, 2020 to
15 August 30, 2021. ECF No. 27 at 2, ¶ 5. Cameron Sutherland, a limited liability
16 corporation, consists of attorneys Brian Cameron and Shayne Sutherland. ECF
17 No. 27 at 2-3, ¶¶ 4, 9. The policy lists Mr. Cameron and Mr. Sutherland as the
18 named insureds under the policy. ECF No. 27 at 4, ¶ 10.

19 On or about October 29, 2019, Isaac Gordon filed a putative class-action
20 against Robinhood Financial, LLC. ECF No. 27 at 2-3, ¶ 6. Mr. Cameron and Mr.

1 Sutherland of Cameron Sutherland and Kirk Miller of Kirk D. Miller P.S.
2 represented Mr. Gordon. ECF No. 27 at 2-3, ¶ 7. Defendants dispute this
3 representation to the extent it “implies that Gordon somehow restricted his
4 representation” to Mr. Cameron, Mr. Sutherland, and Mr. Miller. ECF No. 34 at
5 17, ¶ 7.

6 On October 18, 2021, Robinhood filed a Motion for Attorney’s Fees based
7 in part on “Plaintiff’s and his counsel’s false and misleading Complaint”, “Plaintiff
8 and his counsel manufactured Plaintiff’s claim”, and “Plaintiff and his counsel
9 have signed their names to numerous filings that violate CR 11.” ECF No. 27 at 4,
10 ¶ 14. Defendants dispute that this language “attributes any sanctionable conduct”
11 to Mr. Sutherland. ECF No. 34 at 23, ¶ 14. This motion sought fees and sanctions
12 against Mr. Miller, Mr. Cameron, Kirk D. Miller, P.S., and Cameron Sutherland –
13 but not Mr. Sutherland individually. ECF No. 20 at 2-3, ¶ 5.

14 On October 28, 2021, Cameron Sutherland submitted a Notice of New
15 Claim or Potential Claim to ALPS based on the allegations in Robinhood’s Motion
16 for Attorney’s Fees. ECF No. 20 at 3, ¶ 7.

17 On April 7, 2022, ALPS filed its Complaint, which included naming Mr.
18 Sutherland individually. ECF No. 20 at 2, ¶¶ 1-2. The Complaint cites to
19 Robinhood’s Motion in the underlying lawsuit as the basis for declaratory relief.
20 *Id.*, ¶ 3. The Complaint seeks “determination as to its defense and indemnity

obligations to ... Brian Cameron, Shayne Sutherland, and Cameron Sutherland PLLC under the Cameron Sutherland Policy.” ECF No. 27 at 5, ¶ 17.

On May 25, 2022, Mr. Sutherland submitted an Insurance Fair Conduct Act Claim Notification (“IFCA”) against ALPS. ECF No. 27 at 5, ¶ 18.

DISCUSSION

I. Summary Judgment Standard

The Court may grant summary judgment in favor of a moving party who demonstrates “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In ruling on a motion for summary judgment, the court must only consider admissible evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The party moving for summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to identify specific facts showing there is a genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

For purposes of summary judgment, a fact is “material” if it might affect the outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is

1 “genuine” only where the evidence is such that a reasonable jury could find in
2 favor of the non-moving party. *Id.* The Court views the facts, and all rational
3 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
4 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
5 “against a party who fails to make a showing sufficient to establish the existence of
6 an element essential to that party’s case, and on which that party will bear the
7 burden of proof at trial.” *Celotex*, 477 U.S. at 322.

8 **II. Insurance Bad Faith**

9 Defendants move for summary judgment on Mr. Sutherland’s breach of
10 good faith and fair dealing counterclaim. ECF No. 19.

11 In Washington, a party may bring a bad faith claim against their insurer
12 based on the “quasi-fiduciary” duty owed to them as an insured. *Cedell v.*
13 *Farmers*, 176 Wash.2d 686, 698 (2013). Good faith requires an insurer to deal
14 fairly with insureds, “giving equal consideration *in all matters* to the insured’s
15 interests.” *Mut. of Enumclaw Ins. Co. v. Dan Paulson Constr., Inc.*, 161 Wash.2d
16 903, 915 n.9 (2007) (internal citation omitted). To prove a bad faith claim, “the
17 policyholder must show the insurer’s breach of the insurance contract was
18 unreasonable, frivolous, or unfounded.” *Smith v. Safeco Ins. Co.*, 150 Wash.2d
19 478, 484 (2003). Whether an insurer acted in bad faith is a question of fact. *Id.*

1 Mr. Sutherland argues that ALPS breached its quasi-fiduciary duty to him by
2 suing him, citing “potentially dishonest, fraudulent, criminal, malicious, or
3 intentionally harmful wrongful acts” when there are no sanction pending against
4 Mr. Sutherland individually. ECF No. 19 at 6-9. ALPS argues Mr. Sutherland was
5 properly named in the Complaint for declaratory relief, as Mr. Sutherland (1) is an
6 interested party as an insured for purposes of the Declaratory Judgment Act, (2) is
7 implicated in the motion seeking fees for “Plaintiff’s counsel’s” misconduct, and
8 (3) submitted an IFCA Notification. ECF No. 25 at 3-6.

9 Under these disputed circumstances, there are material questions of fact as to
10 whether ALPS’s conduct was unreasonable, frivolous, or unfounded in naming Mr.
11 Sutherland individually in this lawsuit. *Smith*, 150 Wash.2d at 484. Therefore,
12 summary judgment on Mr. Sutherland’s counterclaim is not appropriate.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 Defendants’ Motion for Partial Summary Judgment (ECF No. 19) is
15 **DENIED.**

16 The District Court Executive is directed to enter this Order and furnish
17 copies to counsel.

18 DATED August 17, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge